



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,301	12/12/2000	Robert C. Oswald	2275-010	3881

7590 08/26/2003

Lowell W. Gresham  
MESCHKOW & GRESHAM, P.L.C.  
Suite 409  
5727 North Seventh Street  
Phoenix, AZ 85014

EXAMINER

SAETHER, FLEMMING

ART UNIT	PAPER NUMBER
----------	--------------

3679

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/734,301

Applicant(s)

OSWALD, ROBERT C.

Examiner

Flemming Saether

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dove in view of Ditka and Resenberg. Dove discloses a drive pin in the environment as defined in the claims (ie. sheet material fastener) including spiral grooves (19) having a minor diameter smaller than a base diameter (column 4, first complete paragraph) but, does not disclose the angle of the spiral grooves as claimed. Ditka disclose a drive pin including the angle of the spiral grooves relative to the longitudinal axis between 0 and 45 degrees which includes the angles which are claimed, the pin of Ditka is intended to use in a different environment (ie. masonry). Rosenberg is a linking reference which teaches the use of the same spiral grooved fastener in both environments. In view of the teaching of Rosenberg, the person of ordinary skill in the art would have recognized to angle the spiral grooves of Dove as disclosed in Ditka in order to optimize both the insertion and retention of the pin. The specific sizes of the pin would have been recognized since it is well known to vary the sizes of pin fasteners depending upon the particular application. Each of the references is read as having a "bullet-shaped" tip.

***Response to Arguments***

In view of the new rejections as applied above, specifically the withdrawal of the 102 rejection using Ditka the only issue remaining is whether the prior art disclose the "bullet-shaped" tip. In that regard, the examiner maintains that the "bullet-shaped" tip continues to read on the applied. The examiner understands, that there is a difference between the tips disclosed in applied references and that disclosed in the instant

Art Unit: 3679

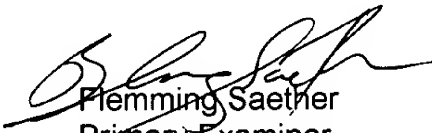
invention. However, it has been settled that the claims must be given their broadest reasonable interpretation and therefore any pointed tip must be considered "bullet-shaped" since there is nothing which would preclude such an understanding since a bullet could have any pointed, or for that matter, unpointed shape.

The examiner suggests the shape of the tip be described in other terms such as "ogival-shaped" (see Hoepker '770, column 2, line 32-33) wherein the drawings would be relied upon to avoid a new matter issues or, where a definition of "bullet-shaped" is found and incorporated into the disclosure, again with the drawings being relied upon to avoid new matter issues. However, care should be taken to avoid a rejection involving Hoepker since Hoepker presumably would read on the redefined "bullet-shaped" tip.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on 703-308-1159.

  
Flemming Saether  
Primary Examiner  
Art Unit 3679

August 21, 2003